

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of:

INNER CITY EXPRESS, INC.,

Respondent.

**Docket No. FMCSA-2008-0127¹
(Western Service Center)**

ORDER

1. *Background*

On March 7, 2008, the California Division Administrator of the Federal Motor Carrier Safety Administration (FMCSA) issued a Notice of Claim (NOC) against Inner City Express, Inc. (Respondent). The NOC, which was based on a February 14, 2008 compliance review, charged Respondent with one violation of 49 CFR 382.305, failing to implement a random controlled substances and/or alcohol testing program, with a proposed civil penalty of \$3,740.

On or about March 20, 2008, Respondent served a reply to the NOC. In its reply, Respondent neither admitted nor denied the violations and did not request administrative adjudication or binding arbitration. Respondent stated: "We believe this fine is unfair because it has been very slow for more than 2 years. The recession has really affected our company."

On May 6, 2008, the Field Administrator for FMCSA's Western Service Center (Claimant) filed a Motion for Order of Default and Memorandum of Law in Support.

¹ The prior case number was CA-2008-0296-US1061.

Claimant moved for entry of an order of default declaring the NOC (including the civil penalty) as the final order in the proceeding because Respondent's reply was so deficient as to constitute no reply at all. Respondent did not reply to the motion.

In an Order served December 8, 2009, I concluded that Respondent, in its reply, effectively admitted violating § 382.305 and noted that although Respondent requested precisely what is required for binding arbitration—a reduction in the amount of the civil penalty—it had not consented to the procedure, as required by FMCSA's "Guidance for the Use of Binding Arbitration Under the Administrative Dispute Resolution Act of 1996."² Therefore, I deferred action on Claimant's Motion and gave Respondent 15 days from the service date of the Order to consent to binding arbitration. I stated that if Respondent failed to respond to the Order, or did not consent to binding arbitration, I would consider granting Claimant's Motion.

On February 8, 2010, Claimant submitted a renewed Motion for Order of Default, asserting that Respondent has failed to respond to the December 8, 2009 Order.

2. Decision

Under 49 CFR 386.14(b) of the Rules of Practice, a respondent must reply to the NOC by choosing one of three options: (1) paying the full amount of the claim; (2) contesting the claim by requesting administrative adjudication; or (3) seeking binding arbitration in accordance with the Agency's dispute resolution program. Respondent did not choose any of these options. Although it effectively admitted the violation and requested a reduction in the civil penalty, Respondent's failure to respond to my

² The Guidance may be found in Docket No. FMCSA-2003-14794 or at 69 Fed. Reg. 10288 (March 4, 2004).

December 8, 2009 Order indicates that it is unwilling to participate in a binding arbitration proceeding.

Accordingly, I find that Respondent defaulted. Inasmuch as it admitted the violation charged in the NOC and failed to pay the full amount of the civil penalty proposed in the NOC, its only option under § 386.14(b) was to request binding arbitration on the amount of the civil penalty and/or the length of time in which to pay it.³ By not consenting to binding arbitration, Respondent has chosen none of the available options and has, therefore, defaulted.⁴

THEREFORE, *It Is Hereby Ordered*, the Motion for Order of Default is granted. The NOC, including the \$3,740 civil penalty assessment, is the Final Order in this proceeding. Respondent shall submit payment of the penalty within 30 days of service of this order. Payment may be made electronically through FMCSA's registration site at <http://safer.fmcsa.dot.gov> by selecting "Online Fine Payment" under the "FMCSA Services" category. In the alternative, payment by cashier's check, certified check, or money order may be remitted to the Claimant at the address shown in the Certificate of Service.



Rose A. McMurray
Assistant Administrator
Federal Motor Carrier Safety Administration

3.17.10
Date

³ See *In the Matter of Archie Palmer*, Docket No. FMCSA-2007-26787, Final Order (August 11, 2007).

⁴ See *In the Matter of Cool Line, Inc.*, Docket No. FMCSA-2009-0092, Order On Binding Arbitration (November 13, 2009).

CERTIFICATE OF SERVICE

This is to certify that on this 19 day of March, 2010, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

William Ramirez, President
Inner City Express, Inc.
900 Eubank Avenue
Wilmington, CA 90744

One Copy
U.S. Mail

Nancy Jackson, Esq.
Trial Attorney
Office of Chief Counsel (MC-CCE)
Federal Motor Carrier Safety Administration
Golden Hill Office Center
12600 W. Colfax Ave., Suite B-300
Lakewood, CO 80215

One Copy
U.S. Mail

William R. Paden
Field Administrator
Federal Motor Carrier Safety Administration
12600 W. Colfax Ave., Suite B-300
Lakewood, CO 80215

One Copy
U.S. Mail

Terry D. Wolf
California Division Administrator
Federal Motor Carrier Safety Administration
1325 J Street, Suite 1540
Sacramento, CA 95814

One Copy
U.S. Mail

Docket Operations
U.S. Department of Transportation
1200 New Jersey Avenue SE
Room W12-140
Washington, DC 20590

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